Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Appropriate Framework for Broadband	)	
Access to the Internet over Wireline	)	CC Docket No. 02-33
Facilities	)	
	)	
Universal Service Obligations of	)	CC Dockets No. 95-20, 98-10
Broadband Providers	)	
Computer III Further Remand Proceedings:	)	
Bell Operating Company Provision of	)	
Enhanced Services; 1998 Biennial	)	
Regulatory Review – Review of	)	
Computer III and ONA Safeguards and	)	
Requirements	)	

Reply Comments of
Communications Workers of America

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The Communications Workers of America (CWA) submits these reply comments to the Commission in this proceeding that examines the appropriate legal and policy framework for broadband access to the Internet provided over domestic wireline facilities.[1] This is one of four Commission proceedings that focus on the regulatory treatment of broadband.[2]

CWA represents more than 730,000 employees. More than 500,000 CWA members work in the telecommunications industry building, maintaining, servicing, and producing content for wireline, cable, and wireless networks. Because of our diverse membership, our positions on telecommunications policy in general and in this proceeding in particular must be technology neutral and support growth in all industry segments. CWA supports policies that encourage network investment across technology platforms and that assure a level playing field so that all parties in the telecommunications market have the opportunity to compete fairly to advance the goals of the Telecommunications Act, including its promise to create good jobs. As consumers and as citizens, CWA members have an interest in communications policies that ensure the widest possible access to diverse information sources, including an open Internet.

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[1] Notice of Proposed Rulemaking, *Appropriate Framework for Broadband Access to the Internet over Wireline Facilities ("NPRM"),* CC Docket Nos. 02-33, 95-20, 98-10, Feb. 15, 2002 (rel).

[2] The other proceedings include the *Declaratory Ruling and Notice of Proposed Rulemaking, In the Matter of Inquiry Concerning High-Speed Access to the Internet Over Cable and Other Facilities* (*Cable Modem Notice),* GS Docket No. 00-185, CS Docket No. 02-52, Mar. 15, 2002 (rel) (in which the Commission concluded that cable modem service is an information service and therefore not subject to Title II common carrier unbundling requirements); *Review of Regulatory Requirements for Incumbent LEC Broadband Services (Incumbent LEC Broadband Notice)*, CC Docket No. 01-337, FCC 01-360, 16 FCC Rcd 22745, Dec. 20, 2001(rel) (in which the Commission examines whether the incumbent LECs are non-dominant in the provision of broadband Internet access services); *Review of Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers;Deployment of Wireline Services Offering Advanced Telecommunications Capabilities* NPRM*,(Triennial UNE Review Notice),* CC Docket No. 96-98, FCC 01-361, CC Docket No. 98-147, 16 FCC Rcd 22781, Dec. 20, 2001 (rel) (in which the Commission considers the incumbent LECs' wholesale obligations to make their facilities available as unbundled network elements for the provision of broadband services). *NPRM,* 8.

In the *NPRM,* the Commission correctly notes "the widespread deployment of broadband infrastructure has become the central communications policy objective of the day."[3] Broadband "will bring valuable new services to consumers, stimulate economic activity, improve national productivity, and advance economic opportunity for the American public."[4]

CWA submits for the record in this proceeding the study, *Putting Broadband on High Speed: New public policies to encourage rapid deployment,* written by Dr. Stephen Pociask and published by the Economic Policy Institute. Dr. Pociask's study documents the importance of broadband to the U.S. economy. Building a nationwide broadband network would create 1.2 million new and permanent jobs. It would bring $500 billion in consumer benefits from new services such as telemedicine, distance learning, services for people with disabilities, rural economic development, public safety, job training, and other services. It would jump-start the sluggish U.S. economy. Information technology (including broadband technology) constitutes one-quarter of gross domestic product and is the most important contributor to productivity gains over the past decade. Policies that stimulate broadband investment, therefore, will reverberate throughout the economy.[5]

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[3] *NPRM*, 1.
[4] *Id.*
[5] Stephen Pociask, *Putting Broadband on High Speed: New public policies to encourage rapid deployment (*Pociask)*,* Washington, D.C.: Economic Policy Institute, 2002, 9 (citing studies by Steve Pociask, "Building a Nationwide Broadband Network: Speeding Job Growth," TeleNomic Research, sponsored by the New Millennium Research Council, Washington, D.C. Feb. 25, 2002 available at www.technet.org; Kevin J. Stiroh, "Investing in Information Technology: Productivity Payoffs for U.S. Industries, "*Current Issues in Economics and Finances,* Federal Reserve Bank of New York, Vol. 7, No. 6, June 2001; *Digital Economy in 2002,* U.S. Department of Commerce, Economics and Statistics Administration, Washington, D.C. 38-40; Dale W. Jorgenson, "Information Technology and the U.S. Economy, *American Economic Review,* Vol. 91, No. 1, March 2001, 1-32; Robert W. Crandall and Charles L Jackson, "The $500 Billion Opportunity: The Potential Economic Benefit of Widespread

Despite the acknowledged economic and social benefits of broadband technology, "consumer broadband services are not being deployed as fast as they should be."[6] One reason for the delayed deployment of broadband services is that the current regulatory environment discourages investment by incumbent local exchange carriers (ILECs) in broadband networks. As Dr. Pociask explains,

> Asymmetric regulation is a potential public policy problem for the high-speed services market. When the Internet was commercialized in 1995, cable television and ILECs raced to develop and test new high-speed data services for the mass market. At the same time, cable modem and DSL were new services. However, regulators chose to apply onerous regulations on the ILECs' new data services, while cable modem services remained unregulated.[7]

According to Dr. Pociask, "while cable companies appear to have benefited from asymmetric regulation, consumers have not."[8] Consumers benefit as broadband providers compete to build networks and deliver new services at lower prices across technology platforms. Asymetrical regulation is dampening investment incentives by incumbent LECs, thwarting the vibrant competition among facilities-based broadband providers using different technologies to drive innovation, growth, and lower prices.

Dr. Pociask notes that because incumbent LECs' investments in DSL networks are subject to unbundling and forward-looking regulated pricing, ILECs have been unable to recover their actual costs, dampening build-out of new broadband networks. Moreover, ILECs' unbundling

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Diffusion of Broadband Internet Access," Criterion Economics, L.L.C., Washington D.C., July 2001, available at www.criterioneconomics.com; Alliance for Public Technology, *Advanced Services, Enhanced Lives,* Washington, D.C., 2002, available at www.apt.org).

[6] Pociask, 5.

[7] *Id.,* 14.

requirements reduce incentives to "extend, differentiate, and innovate their (broadband) services. Instead of providing a means to vertically integrate and reduce production costs, open network regulations have inhibited these efficiencies and adversely affected rollout of services."[9]

The policy implications are clear. According to Dr. Pociask, "symmetrical regulation spurs broadband investment."[10] Cable modem service, where unbundling and sharing requirements are nonexistent, has twice as many subscribers as DSL service. South Korea, the global leader in broadband services, does not require unbundling or line sharing to regulate broadband deployment and has six times more DSL subscribers than the U.S. Moreover, South Korea's DSL deployment did not come at the expense of cable modems, which are also more widely deployed than in the U.S. According to Dr. Pociask, "this suggests that intermodal competition would lead to higher market penetration, and presumably with lower prices."[11]

In this proceeding, the Commission must act to ensure that wireline broadband providers are not required to unbundle their broadband investments, unless they voluntarily choose to do so. This would create regulatory parity among broadband facility providers and encourage new investment in broadband networks. It would not threaten voice telephone competition, which would still be subject to Section 251 unbundling requirements.

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[8] *Id.*, 16.
[9] *Id.,* 14.
[10] *Id.,* 16.
[11] *Id.,* 16.

At the same time, the Commission should provide a minimum standard for open networks to ensure consumers have the widest possible access to diverse information sources. Facilities-based broadband providers--cable, DSL, and wireless--should have some minimal requirements to wholesale broadband services. This would help create intermodal competition for ISP traffic and create a natural market for wholesale services to develop. Wholesale agreements should be freely negotiated, as long as the terms and conditions are applied on a nondiscriminatory basis.[12]

Finally, the Commission should alter its existing universal service rules to ensure adequate funding to meet universal service obligations and to ensure that all broadband platforms compete on a level playing field. The Commission should require all providers of interstate telecommunications to contribute to the universal service fund. Under current rules, a wireline company is required to contribute to universal service based on the transmission facilities used by any affiliated or non-affiliated ISP. A cable operator can avoid any universal service obligation for transmission facilities that it self-provisions as part of its own Internet service. According to SBC, in the broadband marketplace, the Commissions' rules result in a 7 percent (or more) surcharge being applied to DSL service, but not competing broadband services.[13] Because all broadband platforms include an interstate telecommunications component, the Commission can exercise its discretion to require all broadband providers to contribute on an equal basis.

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[12] *Id.,* 19.

[13] Comments of SBC Communications, Inc., *In the Matter of Appropriate Framework for Broadband Access to the Internet over Wireline Facilities, Universal Service Obligations of Broadband Providers, Computer III Further Remand Proceedings;* CC Docket Nos. 02-33, 95-20, 98-10, May 3, 2002, 43.

In sum, the appropriate framework for broadband access to the Internet over wireline facilities is one of symmetrical regulation that limits intrusive bundling requirements, supplemented by some open market requirements. This framework satisfies the four goals articulated by the Commission in this proceeding to encourage ubiquitous deployment to all Americans, promote the development of multiple broadband platforms, ensure a minimal regulatory environment that promotes investment and innovation in a competitive market, and provides an analytical framework that is consistent across multiple platforms.[14] Moreover, a level regulatory playing field would heighten competition between cable, wireline, and wireless carriers to build broadband networks and deliver new services at lower prices. This would produce many consumer welfare benefits, stimulate the economy, create many good jobs, and improve the quality of life for all Americans.

[14] *NRPM, 2-5.*

Respectfully submitted,

Communications Workers of America

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